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In the Supreme Court of the United States

ILLINOIS,

Petitioner,

v.

ROY I. CABALLES,

Respondent.

On Writ of Certiorari
To the Supreme Court of Illinois

BRIEF OF ARKANSAS AND 27 OTHER STATES AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the Fourth Amendment requires reasonable, articulable suspicion to justify using a drug-detection dog during a legitimate traffic stop.

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INTEREST OF THE AMICI CURIAE

The amici States have a specific and a general interest in the resolution of this case. Law enforcement officers in many of the amici States use drug-detection dogs during traffic stops as one method of combating the drug trade. If the ruling of the Illinois Supreme Court is not reversed, this valuable law enforcement tool will be severely curtailed. More generally, the amici States have an interest in ensuring that law enforcement officers are not unduly restricted in the actions they can take during valid traffic stops. The principles applied by the Illinois Supreme Court might make unlawful a host of commonplace law enforcement practices. It is critical to the amici that this Court correct the Illinois Supreme Court's misapplication of the Fourth Amendment.

STATEMENT OF THE CASE

On November 12, 1998, Trooper Daniel Gillette stopped respondent for speeding on Interstate 80 in Illinois. Gillette called the dispatcher at 5:06 p.m. to check respondent's license plates. Trooper Craig Graham of the Illinois State Police Drug Interdiction Team heard the call over the radio and advised that he was going to meet Gillette and conduct a canine sniff. Pet. App. 1a-2a, 13a, 22a.

Gillette approached respondent in his car, informed him that he was speeding, and asked for his license, vehicle registration, and proof of insurance. Gillette then told respondent to park his car further onto the shoulder of the road and to walk over to the squad car. Once respondent was sitting in the squad car with him, Gillette advised that he was going to issue a warning ticket. Pet. App. 2a, 13a.

Gillette called the radio dispatcher to check the validity of respondent's license and to see if he had any outstanding warrants. The dispatcher informed Gillette that respondent had surrendered a valid Illinois license to Nevada, but the validity of his Nevada license was not confirmed for another two minutes. Gillette then asked the dispatcher to obtain respondent's criminal history. As he awaited the results, he asked respondent if he had any prior arrests and whether he would grant consent to search his car. Respondent answered "no" to both questions. At 5:12 p.m., the dispatcher advised that respondent had two prior arrests for distribution of marijuana, whereupon Gillette began to write a warning ticket. Pet. App. 2a-3a, 14a.

While Gillette was writing the warning ticket, Trooper Graham arrived with the drug-detection dog. Gillette told Graham that he was writing a warning ticket and that Graham should walk the dog around respondent's car. Less than one minute later, Graham advised that the dog had alerted at the

trunk. Gillette then searched the trunk and found marijuana. At 5:15 p.m., Gillette changed the activity code of the stop to a narcotics detention. Gillette seized the marijuana and arrested respondent, who signed the warning ticket once he was at the police station. Pet. App. 3a, 14a, 22a.

Respondent was subsequently charged with cannabis trafficking in violation of 720 Ill. Comp. Stat. 550/5.1(a) (West 1998). Pet. App. 3a. The trial court denied his motion to suppress the drugs found in his trunk and convicted him after a bench trial. An Illinois Appellate Court affirmed. Pet. App. 20a. In a 4-3 decision, the Illinois Supreme Court reversed. The court applied the two-part test from *Terry v. Ohio*, 392 U.S. 1 (1968), to hold that police need reasonable suspicion of drug-related activity before using a drug-detection dog during a legitimate traffic stop. Pet. App. 4a-5a. The Court reasoned that the dog sniff of respondent's car was improper because "it impermissibly broadened the scope of the traffic stop in this case into a drug investigation." Pet. App. 5a.

SUMMARY OF ARGUMENT

1. Because *Terry* stops are based on reasonable suspicion, not probable cause, courts are required to examine "whether the officer's action . . . was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20. After undertaking such an

examination, the Illinois Supreme Court held that the use of a drug-detection dog during the stop of respondent violated the Fourth Amendment. However, Officer Gillette stopped respondent based upon probable cause that he violated the law. The Illinois Supreme Court thus applied the wrong analytic framework in addressing respondent's suppression motion. The *Terry* rules do not apply to stops founded upon probable cause.

In viewing the case as it did, the Illinois Supreme Court misread this Court's precedents, which have confirmed that *Terry* stops are analytically different from seizures based upon probable cause. *See, e.g.*, *Berkemer v. McCarty*, 468 U.S. 420, 439 n.29 (1984). Whereas courts examining *Terry* stops must balance competing governmental and individual interests, "with rare exceptions . . . the result of that balancing is not in doubt where the search or seizure is based upon probable cause." *Whren v. United States*, 517 U.S. 806, 817 (1996). Simply put, an officer who possesses probable cause that a crime has been committed has the authority to take actions he would not necessarily have been entitled to take had he possessed only reasonable suspicion. This authority applies to routine traffic stops founded upon probable cause just as fully as it applies to other seizures. The validity of the canine sniff here must therefore be assessed based on an officer's authority to act when he has probable cause, not based on his narrower authority to act when he has reasonable suspicion.

2. This Court looks beyond probable cause to determine the reasonableness of a search or seizure only when it is executed in "an extraordinary manner, unusually harmful to an individual's privacy or even physical interests." *Whren*, 517 U.S. at 818. Examples of such extraordinary actions are ones in which deadly force was used or in which the body was penetrated. By contrast, the use of a drug-detection dog is not an extraordinary measure that triggers further scrutiny of a traffic stop beyond the probable cause that justified the stop. A canine sniff, which simply uses a trained dog's sense of smell, is far closer in nature to a police officer's lawful observation of objects in plain view during the course of a traffic stop, which observation does not require additional justification beyond the probable cause for the stop.

Even if it were assumed that using a drug-detection dog converts a routine traffic stop into an "extraordinary seizure," the government's legitimate interest in detecting the substantial amount of illegal drugs that is carried on the nation's highways outweighs the motorist's interest in avoiding what is, at most, a minimal additional intrusion on his freedom. Finally, to the extent the Illinois Supreme Court crafted its no-canine-sniff rule based on a concern that the police will make traffic stops a pretext for investigating other offenses, its holding is directly contrary to *Whren*, 517 U.S. at 812-13, and *Ohio v. Robinette*, 519 U.S. 33 (1996), where this

Court rejected proposed prophylactic rules designed to limit pretextual stops.

ARGUMENT

The Fourth Amendment Does Not Require Reasonable Suspicion to Justify Using a Drug-Detection Dog to Sniff a Vehicle During a Legitimate Traffic Stop Founded Upon Probable Cause.

The Illinois Supreme Court held that police need reasonable suspicion before using a drug-detection dog during a legitimate traffic stop. Pet. App. 4a-5a. In reaching that conclusion, the court made two fundamental errors. First, the court "applied the two-part test adopted in *Terry v. Ohio* . . . to determine the overall reasonableness of the stop." Pet. App. 4a. Trooper Gillette's seizure of respondent, however, was based on probable cause. The rules governing *Terry* stops are therefore inapposite. Second, the court reasoned that the dog sniff—which does not constitute a Fourth Amendment search, *see Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000), and which did not prolong the stop—was nevertheless improper because it "impermissibly broadened the scope of the traffic stop in this case into a drug investigation." Pet. App. 5a. But a Fourth Amendment non-event such as a dog sniff does not broaden the scope of a traffic stop. Just as a police officer may lawfully observe what is in his plain view during the course of a traffic stop (or a

Terry stop, for that matter), so too may he (or his canine assistant) use other senses to make observations during the course of a traffic stop.

A. The Illinois Supreme Court Erred in Applying the Rules Governing *Terry* Stops to a Traffic Stop Based on Probable Cause

1. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Thus, the touchstone of analysis under the Fourth Amendment is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977) (*per curiam*) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)). Before *Terry v. Ohio*, the "term 'arrest' was synonymous with those seizures governed by the Fourth Amendment," and all arrests required probable cause to be reasonable. *Dunaway v. New York*, 442 U.S. 200, 207-08 (1979). In *Terry*, the Court recognized that the government's interest in the prevention and detection of crime would not be properly served by requiring officers to have "the precise level of information necessary for probable cause to arrest" before briefly stopping a person to investigate or prevent a suspected crime. *Terry*, 392 U.S. at 22; *see also Adams v. Williams*, 407 U.S. 143, 145 (1972). Officers lacking probable cause needed the ability to adopt an

"intermediate response" short of arrest to "maintain the status quo momentarily while obtaining more information." *Adams*, 407 U.S. at 145-46.

The Court responded by approving the investigative stop, *see Brignoni-Ponce*, 422 U.S. at 881-82, a category of seizure "so substantially less intrusive than arrests that the general rule requiring probable cause to make Fourth Amendment 'seizures' reasonable could be replaced by a balancing test." *Dunaway*, 442 U.S. at 210. Balancing the government's important interest in the detection and prevention of crime against the minimal intrusion of a brief stop, the Court determined that investigative stops need only be justified by an officer's reasonable suspicion that crime is afoot. *See Brignoni-Ponce*, 422 U.S. at 881.

Because reasonable suspicion justifies a seizure only if the seizure remains a minimal intrusion when weighed against the government's interest, *see Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. ___, slip. op. at 9 (2004), the validity of an investigative detention also depends on "whether the officer's action . . . was reasonably related in scope to the circumstances which justified the interference in the first place." *United States v. Sharpe*, 470 U.S. 675, 682 (1985) (quoting *Terry*, 392 U.S. at 20). This requires examining the relationship between the officer's investigation and the reason for the stop and whether the duration and other conditions of the

detention are appropriate in light of the nature of the suspicion. *See United States v. Place*, 462 U.S. 696, 709-710 (1983) (90-minute detention of luggage for dog-sniff was unreasonable due to lack of diligent investigation); *Dunaway*, 442 U.S. at 216 (the degree of intrusiveness associated with custodial interrogation required probable cause).

2. The Illinois Supreme Court has held that *Terry* principles govern the conduct of police during "routine traffic stops," even those based (as here) on probable cause. Pet. App. 4a (citing *People v. Gonzalez*, 704 N.E.2d 375 (Ill. 1998)); *see also People v. Cox*, 782 N.E.2d 275, 278 (Ill. 2002). In *Gonzalez*, the court justified that approach by reference to three decisions of this Court, which the Illinois court characterized as equating *Terry* stops and traffic stops. 704 N.E.2d at 421-22 (citing *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984); *Michigan v. Long*, 463 U.S. 1032, 1047-52 (1983); and *Mimms*, 434 U.S. at 111-12). The Illinois Supreme Court's reading of this Court's decisions is, however, flatly wrong. This Court has, quite properly, not equated those two types of police actions. Accordingly, the constitutional limits that are specific to *Terry* stops do not govern police conduct during traffic stops based on probable cause.

Berkemer is the most instructive of the three cases on the relationship between *Terry* stops and traffic stops founded upon probable cause. One of the issues before the Court in *Berkemer* was whether the police

must give *Miranda* warnings before questioning motorists detained during a routine traffic stop. In holding that such warnings are not required, the Court observed that the brevity of the typical traffic stop and the vulnerability felt by a stopped motorist make "the usual traffic stop . . . more analogous to a so-called *Terry* stop . . . than to a formal arrest." *Berkemer*, 468 U.S. at 439 (internal citation omitted). The Court was careful to add, though, that

> [n]o more is implied by this analogy than that most traffic stops resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry*. We of course do not suggest that a traffic stop supported by probable cause may not exceed the bounds set by the Fourth Amendment on the scope of a *Terry* stop.

Id. at 439 n.29. The Illinois Supreme Court plainly failed to heed that caution and read far more into the analogy than this Court intended.

The Illinois Supreme Court likewise misread *Michigan v. Long* and *Pennsylvania v. Mimms*. To be sure, in *Long* this Court applied *Terry* to determine the validity of the search of the passenger compartment of a vehicle. The Court did this for good reason—the officers did not stop the vehicle based on probable cause. Rather, the officers observed the vehicle swerve into a ditch, investigated, and then

subjected the driver to a *Terry* protective patdown and a protective search of the passenger compartment of the car. *Long*, 463 U.S. at 1035-36; *see also id.* at 1035 n.1 ("The court below treated this case as involving a protective search, and not a search justified by probable cause to arrest . . . .").

In *Mimms*, the Court addressed two questions: whether an officer may order a lawfully detained motorist to exit his vehicle, and whether the officer may then conduct a patdown of the motorist. 434 U.S. at 108-112. The Court answered the first question "yes" after concluding it is reasonable for an officer to order a detained motorist out of his vehicle. The Court cited *Terry* several times during the course of its discussion of Fourth Amendment reasonableness (*id.* at 109-111), but did not state that all traffic stops must be treated as *Terry* stops, let alone apply the *Terry* standard that an officer's action must be "reasonably related in scope to the circumstances which justified the interference in the first place." In answering the second question "yes," the Court stated that "the answer is controlled by *Terry v. Ohio*, *supra*." *Id.* at 111. Once again, however, that is a far cry from equating all traffic stops with *Terry* stops for Fourth Amendment purposes. *Terry* authorized officers to patdown detained individuals when appropriate; *Mimms* simply held that the patdown of Mr. Mimms was appropriate. To the extent *Mimms* left unclear the relationship between *Terry* stops and traffic stops based on probable cause, footnote 29 of

Berkemer confirmed that the two are analytically distinct.[1]

3. Even if this Court had been silent on the issue, as a matter of logic and principle it is plain that the *Terry* stop doctrine—requiring careful examination of "whether the officer's action . . . was reasonably related in scope to the circumstances which justified the interference in the first place"—does not control the constitutionality of seizures supported by probable cause. *Terry*'s exception to the general rule requiring probable cause was predicated on the minimal intrusion of the investigatory stop as balanced against the government's interests. *See Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion). Limitations on the scope of the encounter were intended to ensure that this balancing of interests does not change from one weighing in favor of the seizure to one weighing against it. *See id.* "With rare exceptions not applicable here, however, the result of that balancing is not in doubt where the search or seizure is based upon probable cause." *Whren v. United States*, 517 U.S. 806, 817 (1996).

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[1] This Court's recent decision in *Hiibel*, *supra*, is not to the contrary. *Hiibel* did not involve a traffic stop founded upon probable cause. Rather, a deputy sheriff responded to a telephone call reporting that a man was assaulting a woman in a truck. "When the officer arrived at the scene, he found the truck parked on the side of the road." Slip op. at 1. The ensuing encounter between the officer and the suspect constituted a *Terry* stop. *Id.* at 6-9.

The analysis does not change merely because, as the Court observed in *Berkemer* (468 U.S. at 439), a routine traffic stop has some features in common with *Terry* stops. Consistent with any other seizure supported by probable cause, a traffic stop meets the general rule of reasonableness without any additional balancing of the interests. *See Whren*, 517 U.S. at 818. Indeed, a finding of probable cause permits even a full-custodial arrest for minor traffic offenses, *see Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001)—an action an officer obviously could not take if he had only reasonable suspicion of wrongdoing. The validity of the canine sniff in this case must, therefore, be assessed based on an officer's authority to act when he has probable cause, not based on his narrower authority to act when he has reasonable suspicion.

B. An Officer's Use of a Drug-Detection Dog During a Lawful Traffic Stop Does Not Impermissibly Expand the Scope of the Stop.

A canine sniff of the outer surfaces of a vehicle by a trained narcotics detection dog does not constitute a search under the Fourth Amendment. *See Edmond*, 531 U.S. at 40; *Place*, 462 U.S. at 707. "An exterior sniff of an automobile does not require entry into the car and is not designed to disclose any information other than the presence or absence of narcotics," and

thus "is much less intrusive than a typical search." *Edmond*, 531 U.S. at 40 (quoting *Place*, 462 U.S. at 707). Moreover, where a drug-detection dog sniffs the vehicle before the business of the traffic stop is complete, as was the case here (Pet. App. 3a), there is no interference with personal freedom beyond what was necessary for the stop in the first place. A canine sniff is, therefore, a Fourth Amendment non-event. It is not a search and it does not prolong a seizure. The question in this case is whether the Fourth Amendment nonetheless prohibits police from utilizing drug-detection dogs during the course of a traffic stop founded upon probable cause that a non-drug-related offense was committed. It does not.

1. This Court looks beyond probable cause to determine the reasonableness of a seizure only when it is executed in "an extraordinary manner, unusually harmful to an individual's privacy or even physical interests." *Whren*, 517 U.S. at 818. Examples of "extraordinary" searches and seizures are

> seizure by means of deadly force, see *Tennessee v. Garner*, 471 U.S. 1 (1985), unannounced entry into a home, see *Wilson v. Arkansas*, 514 U. S. 927 (1995), entry into a home without a warrant, see *Welsh v. Wisconsin*, 466 U.S. 740 (1984), or physical penetration of the body, see *Winston v. Lee*, 470 U.S. 753 (1985).

Whren, 517 U.S. at 818; *see also Atwater*, 532 U.S. at 354 (applying "extraordinary manner" test to hold that arrest based on probable cause that traffic offense was committed was reasonable). The use of a drug-detection dog does not remotely compare with the above-listed actions such that it would trigger scrutiny of a traffic stop beyond the probable cause that justified it at its inception. As this Court noted in *Place* with respect to canine sniffs, "[w]e are aware of no other investigative procedure that is so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure." 462 U.S. at 707.

Indeed, a canine sniff, which simply uses a trained dog's sense of smell, is far closer in nature to a police officer's observation (and subsequent seizure) of objects in plain view during the course of a traffic stop. In *Horton v. California*, 496 U.S. 128 (1990), the Court held that an officer may seize evidence of crime in plain view even if the discovery of the evidence was not inadvertent. The Court explained that observing and seizing an object in plain view does not "involve any invasion of privacy," *id.* at 133, and the seizure does not improperly invade the owner's possessory interests because "no additional Fourth Amendment interest is furthered by requiring that the discovery of evidence be inadvertent." *Id.* at 140. The same is true when officers use drug-detection dogs in the course of lawful traffic stops. Like the intentional attempt to find evidence of wrongdoing under the

plain view doctrine, the intentional attempt to detect the scent of drugs (through the canine sniff) invades no constitutionally relevant privacy interests and it is not a "search" within the meaning of the Fourth Amendment. And like the intentional attempt to find evidence of wrongdoing under the plain view doctrine, "no additional Fourth Amendment interest is furthered" by preventing the seizure of illegal drugs once they are discovered during the course of a validly-initiated traffic stop.

2. Even if one assumed, *arguendo*, that the use of drug-detection dogs during a traffic stop made the stop an "extraordinary seizure" akin to seizure by means of deadly force or physical penetration of the body, the competing interests would weigh in favor of permitting the use of drug-detection dogs. On the government-interest side of the balance, a substantial amount of illegal drugs are trafficked in cars traveling on the nation's highways.[2] Moreover, detection of

[2] Beginning in the early 1980's the rate of seizures and arrests indicated that the nation's highways had become major arteries for drug transportation. Consequently, the Drug Enforcement Administration and state and local law enforcement established Operation Pipeline and Operation Convoy, which are highway drug-interdiction programs that target private passenger vehicles and commercial vehicles, respectively. *Testimony before the Subcommittee on the Western Hemisphere House Committee on International Relations* (March 3, 1999) (statement of Donnie Marshall, Deputy Administrator, Drug Enforcement Administration), *available at* http://www.usdoj.gov/dea/pubs/cngrtest/ct990303.htm (last visited on May 12, 2004). Between January 1986 and December 2001, Operation Pipeline and Operation Convoy led to seizures of $704 million in currency, 1,343,778 kilograms of marijuana, 942 kilograms of crack cocaine, 151,557 kilograms of cocaine, 539 kilograms of heroin, and 5,362 kilograms of methamphetamine. *Operations Pipeline and Convoy*, *available at* http://www.usdoj.gov/dea/programs/pipecon.htm (last visited on May 12, 2004).

drugs is increasingly difficult as traffickers get more sophisticated in their methods of concealing contraband.[3] As a result, drug-detection dogs are valuable tools for exposing illegal drug traffic. This Court has observed on several occasions the magnitude of the drug-trafficking problem and the need for flexibility in uncovering those who carry illegal drugs. *See United States v. Mendenhall*, 446 U.S. 544, 561-62 (1980) (noting that characteristics of drug trafficking pose "obstacles to detection of illegal conduct . . . unmatched in any other area of law

[3] Drugs are concealed by hiding them in remote areas of cars, such as gas tanks, *see United States v. Flores-Montano*, 541 U.S. ___, 124 S.Ct. 1582, 1584 (2004), radiators and transmission parts. *See* WLOX.com, *Drug Runners Favor Interstate Ten* (May 5, 2004) *at* http://www.wlox.com/global/story.asp?s=1843&ClientType=Printable (last visited on May 12, 2004). Smugglers have also begun dissolving cocaine in a liquid solution, soaking shirts and sweaters in it, drying them and then packing them in suitcases. Once they arrive at their destinations, they soak the clothing in water to draw out the drug and then let the solution evaporate back into powder form. *See* Donna Leinwand, *Smugglers Refine Tricks to Pass Stricter Security; Border Agents Confiscating Record Amount of Narcotics, but Stable Price on the Street Reflects Drug Rings' Success*, USA Today, April 11, 2002, *available at* 2002 WL 4723937.

enforcement"); *Royer*, 460 U.S. at 519 (Blackmun, J., dissenting) ("The special need for flexibility in uncovering illicit drug couriers is hardly debatable.").

On the individual's side of the balance, respondent was not detained any longer by Trooper Gillette as a consequence of the canine sniff. As a more general matter, any additional time devoted to these investigations will be a minimal intrusion on the motorist's freedom, as most can be done expeditiously. *See Royer*, 460 U.S. at 505 (suggesting that conducting canine sniffs is an expeditious method of detecting drugs). For example, the drug-detection dog alerted on the trunk of respondent's car in less than a minute, and the time from the initial stop to his arrest was approximately nine minutes. Pet. App. 3a, 22a. Moreover, a canine sniff is restricted to the outer surfaces of the vehicle and "discloses *only* the presence or absence of narcotics," *Place*, 462 U.S. at 707 (emphasis added), thereby limiting any intrusion upon the suspect's privacy. Although a motorist may experience minor inconvenience and embarrassment, that interest does not outweigh law enforcement's legitimate interest in detecting increasingly well-hidden illegal drugs. *Cf. Mimms*, 434 U.S. at 111 (ordering motorist out of his car is at most a mere inconvenience that cannot outweigh the interest in officer safety); *Hiibel*, slip op. at 9 (requiring a suspect to identify himself during a *Terry* stop is reasonable because, *inter alia*, it does not change the duration or location of the stop).

Accordingly, the use of drug-detection dogs, even if subject to Fourth Amendment balancing, does not transform a traffic stop supported by probable cause into an unreasonable seizure.

3. In *People v. Cox*, the Illinois Supreme Court suggested that its no-canine-sniff rule is premised on the concern that the police will use traffic stops as a pretext for investigating other offenses. *See* 782 N.E.2d at 280 ("An officer's authority to investigate a traffic violation may not become a subterfuge in order to obtain other evidence merely based on the officer's suspicion") (quoting *People v. Koutsakis*, 649 N.E.2d 605, 609 (Ill. App. Ct. 1995)). Other courts that adopted the no-sniff rule have expressed similar concerns. *See, e.g., State v. Weigand*, 645 N.W.2d 125, 136 (Minn. 2002) ("the officer appeared to have used the opportunity of a routine equipment violation, along with the availability of other officers to write a warning ticket, to conduct the dog sniff"). To the extent the Illinois Supreme Court crafted its no-canine-sniff rule based on that concern, its holding is directly contrary to *Whren*.

In *Whren*, the Court reaffirmed that an officer's subjective motivation plays no role in the determination of the reasonableness of a traffic stop supported by probable cause. 517 U.S. at 812-13. Citing *United States v. Villamonte-Marquez*, 462 U.S. 579, 584 n.3 (1983), *Scott v. United States*, 436 U.S.

128, 138 (1978). *United States v. Robinson*, 414 U.S. 218 (1973), and *Gustafson v. Florida*, 414 U.S. 260, 266 (1973), the Court stated that "these cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved." *Whren*, 517 U.S. at 813. The Court further held—of particular relevance here—that those cases foreclose the adoption of purportedly "objective" rules that are "designed to combat nothing other than the perceived 'danger' of the pretextual stop, albeit only indirectly and over the run of cases." *Id.* at 814.

A year later, the Court once again rejected a proposed prophylactic rule designed to limit pretextual traffic stops by the police. In *Ohio v. Robinette*, 519 U.S. 33 (1996), the Court rejected a *per se* rule, adopted by the Ohio Supreme Court, that required police officers to inform motorists stopped for traffic offenses that they were free to go before they could attempt to engage in a consensual interrogation. Although the Ohio Supreme Court adopted the rule out of concern that police officers were using consensual searches "to turn a routine traffic stop into a fishing expedition for unrelated criminal activity," *Robinette*, 519 U.S. at 41 (Ginsburg, J., concurring) (quoting 653 N.E.2d 695, 699 (1995)), this Court found the rule flatly inconsistent with its Fourth Amendment jurisprudence. The same holds true for the inflexible rule adopted by the Illinois Supreme Court that would bar police officers from using drug-

sniffing dogs during traffic stops based on probable cause.

CONCLUSION

For the foregoing reasons, the decision below should be reversed

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